

IN THE HIGH COURT OF JUDICATURE AT BOMBAY
ORDINARY ORIGINAL CIVIL JURISDICTION

WRIT PETITION NO. 2193 OF 2006

Ramesh Motiram Ramchandani,
Working as Commissioner
(Appeals-I), Customs &
Central Excise, Central Excise
Building, Dhamtari Road,
Tikarapara, Raipur 492 001
(C.G.) Having permanent place
of Residence at 301, Shangrila
"B", Harminster Singh Road,
Seven Bungalows, Mumbai 400 061.... Petitioner

Vs.

1. Union of India, through
the Secretary in the
Ministry of Finance,
Department of Revenue,
North Block, New Delhi 110 001.
2. The Cabinet Secretary,
Govt of India,
Rashtrspati Bhavan,
New Delhi 110 001.
3. The Secretary,
Department of Personnel,
Training, and Public
Grievances, North Block,
New Delhi 110 001.
4. Shri. K.K. Agarwal,
Member (Technical),
Customs, Excise & Service Tax
Appellate Tribunal, having his
Residence at E-38, Hyderabad
Estate, Napeansea Road,
Mumbai 400 036. ... Respondents

Mr. G.K. Mansad with Mr. S.V. Marne for Petitioner.

Mr. D.R. Zaiwala, Sr. Counsel with
Mr. Kiran Kanpile i/by T.C. Kaushik for Respondents.

**CORAM: F.I. REBELLO &
ANOOP V. MOHTA, JJ.**

DATED: AUGUST 22, 2006

ORAL JUDGMENT (Per F.I. Rebello, J.) :

1. Rule. Heard forthwith.

. The Petitioner has approached this Court against the order of the Central Administrative Tribunal, Bombay Bench Mumbai dated 30.6.2006. The Petitioner by his O.A. had sought a direction that he be appointed as a Member (Technical) in Customs, Excise and Service Tax Appellate Tribunal, (CESTAT), on the basis of recommendation made by the Selection Committee to the appointment committee (A.C.C.). The Petitioner has also sought a direction that after the approval of the A.C.C. the action of the respondents in submitting a proposal for deletion of his name be declared as illegal and bad in law.

2. The selection committee consisted of a sitting Judge of the Supreme Court, Secretary, Ministry of law, Secretary (Revenue) in the Ministry of finance was constituted. The Petitioner was one of the applicants. The selection committee recommended three names for the post of Member (Technical). The select list as drawn up, included the names of (1) Mr. P.V. Sairam, (2) Mr. R.M. Ramchandani (Petitioner herein) and (3) Mr. P. Karthikeyan. A wait list of three names, was also prepared. After processing the recommendations of the Selection Committee, the cabinet secretary, forwarded a note for A.C.C. in March, 2005 which came to be considered sometime in April, 2005. The Cabinet

Committee according to Petitioner had withheld his appointment and the Petitioner being aggrieved by that action has approached the tribunal. It was the case of the Petitioner before the learned Tribunal that after the selection committee had recommended his name and he has been granted vigilance clearance by the department of Revenue, by O.M. dated 19.4.2004, he ought to have been appointed. According to the Petitioner, he came to know that his name had been annulled as his name found a place in the 'Agreed list'. This information was not placed before the selection committee. Secondly the Agreed list cannot be used as punitive measure. The Petitioner has an unblemished record and has received adverse endorsement only once which has been expunged pursuant to representation dated 24.11.1992. The Petitioner also relied on the instructions issued by the C.B.E.C. vide OM dated 28.3.2002, i.e. pending investigations or inclusion in Agreed list/list of officers of doubtful integrity would not bar the promotion of an employee and the CVO is to accord unqualified vigilance clearance to these employees". The vigilance clearance having been given his name should have been cleared for appointment. Merely because his name had figured in the Agreed list, cannot be used to negate the selection made by a high power committee headed by a Judge of the Supreme Court. Reliance has been placed by the learned counsel on several judgments. It is further submitted that A.C.C.

ought not to have placed reliance on the additional material which was not before the Selection Committee as the same is contrary to the law declared by the Supreme Court.

3. The learned Tribunal noted that one of the contentions raised by the Petitioner herein was that he was not given any opportunity of giving his say on the issue of his name being on the agreed list and as such the consideration of the agreed list by the A.C.C. is in violation of the principles of natural justice. The tribunal noted that in the case of Inder Raj Soni Vs. Union of India and Others, decided by Central Administrative Tribunal, Principal Bench on 8.6.2006 in Original Application No. 1416 of 2005 such argument had been considered and it had been held that Member, CBEC is a sensitive post and involves tax Policy and Administration of Direct Taxes and only persons of unblemished record should man such posts. The Agreed list is a list of officers of perceived doubtful integrity in certain departments prepared jointly by the CBI and department. The instructions provide a quiet check about the reputation of such officers without contemplating any punitive action as such. Though no adverse or punitive action is contemplated, the officers on Agreed List are not to be posted on a sensitive post. The tribunal then noted the second argument canvassed before it, that the Members, CESTAT

deals with the appeals against the orders passed by Commissioner (Appeals) and the Government has classified the post Commissioner (Appeals) as non-sensitive. The tribunal rejected that contention by holding that it was not possible to accept the logic that an Appellate Tribunal hearing appeals from a Tribunal or Appellate Tribunal will be sensitive only when the posts of Member of the Tribunal or Appellate Tribunal are sensitive. It noted that the very fact that selection of Member, CESTAT is done by a Committee headed by a sitting Judge of the Supreme Court by itself is sufficient enough to indicate that the Government regards such post as a sensitive post and such classification cannot be regarded as irrational. The third argument raised was that material in addition to the material placed before the Selection Committee, was placed before the A.C.C. in its meeting which approved the annulment of applicant's name from the list. The tribunal noted that the Agreed list came to the notice of the Revenue Secretary on 16.5.2005. Another A.C.C. note was floated on 30.5.2005 and the A.C.C. approved the annulment of Petitioners' name. The Tribunal then posed a question to itself, whether this was in consonance with the judgement of the Supreme Court in Dr. A.K. Doshi Vs. Union of India, 2001 (4) S.C.C. 43. The tribunal recorded a finding that the Petitioner's name had been on the agreed list, was known to the C.B.S.E. but was not incorporated in

the note for A.C.C. dated 18.2.2005. In the subsequent note dated 30.5.2005 it was mentioned that this lapse in not submitting this vital information is regretted. The tribunal therefore, recorded a finding that the information of the applicant's name being on Agreed list did not come in between the dates of the meeting of selection committee and that of A.C.C. Considering this, that argument was also rejected. The tribunal also noted that the selection of the applicant was to an ex-cadre post and that the Petitioner has not acquired any right for holding the post of Member of CESTAT. For all the aforesaid reasons, the Tribunal found that the contentions as urged were devoid of merit and dismissed the application. It is this order which is the subject matter of the present petition.

4. The learned counsel for the Petitioner, submits that even assuming that the Petitioner's name was in the agreed list, there is nothing to show that it was on the date when the selection committee met. If the O.M. dated 5.5.1996 is considered, which pertains to the agreed list, at the end of the period of one year, for which period the list would be in force, it had to be reviewed and if there was no sufficient material against those officers, their names had to be deleted from the list by following the procedure considering Clause 7 and 8 of the O.M. It is pointed out that in the Petitioner's case, there was nothing further done

and as such, the very fact that the Petitioner's name was at one point of time on the agreed list would be of no consequence. The agreed list cannot be used as a punitive measure. Our attention was invited to communication of 20.3.2002 in the matter of obtaining vigilance clearance. In the instant case, it is pointed out that the clearance was given and merely because the Petitioner's name had been on the agreed list, cannot result in denying the Petitioner promotion. Our attention is also invited to the O.M. dated 25.10.2004. This pertains to a case of an Officer who is under investigation or against whom a charge sheet is pending. It is also pointed out that in the instructions pertaining to writing of the confidential report in Column 9, there is column which states "if the Officer's integrity is beyond doubt, it may be so stated". It was not so stated. In these circumstances, it is submitted that the impugned order of C.A.T. is liable to be set aside.

5. We may first note the judgment in the case of Dr. A.K. Doshi Vs. Union of India 2001 S.C.C. (L& S) 1072. In that case, the selection committee had selected the appellant before the Supreme Court as a member of the Company Law board. The Supreme Court noted, that the Secretary, Appointments Committee could not have made any adverse comments and place extra adverse material against the selectee and what was to

be placed was the material considered by the Selection Committee without any addition or alteration. The Apex Court noted that in that case, the action of the Secretary to the Appointments Committee, by adding noting in the file was an attempt to interfere with the process of selection, which was neither permissible under the Rules nor desirable otherwise. At the same time, the court noted as under :

"If in an exceptional case the Appointments Committee feels that certain material which was not available to be considered by the Selection Committee has come into existence in the meantime, and the material is relevant for the purpose of appointment, then, the matter should be placed before the Appointments Committee with the additional material for its consideration. "

. It is therefore, clear that the Supreme Court has not ruled out that in exceptional cases, material can be placed before the Appointment's Committee of the Cabinet.

. The Judgment in Union of India Vs. K.V. Jankiraman AIR 1991 SC 2010, would really not be attracted as it pertains to the sealed cover procedure to be followed against employees against whom the charge/chargesheet

is issued. We are really not concerned here with a case of departmental promotion, as what we are considering is appointment to an ex cadre post for which the Petitioner was eligible and had applied.

6. The question before us is whether it can be said that the order of the Tribunal suffers from any error of law apparent on the face of the record warranting interference by this Court in its extra ordinary jurisdiction. It is no doubt clear that once the Selection committee is headed by the high functionary and in this case, a Hon'ble Judge of the Supreme Court, normally there ought to be no interference with the selection done. However, as noted by the Supreme court itself, in Dr. A.K. Doshi (supra), in exceptional cases, material may be placed before the Appointments Committee which was not placed before the Selection Committee. Before the Selection Committee what would normally be available, would be the service record in the form of C.R.s. Admittedly in the case of Petitioner, in his C.R.s in so far as integrity is concerned, as required in the form which was to be maintained, there was nothing adverse. Subsequent to 1966, in the matter of Agreed list, there is O.M. of 28.10.1969. That provides the scheme for preparation, maintenance and custody of the lists of public servants of gazetted status of doubtful integrity. This O.M. will indicate that it will not affect the continuance

of the annual agreed list of suspected officers which are being prepared under O.M. dated 5th May, 1966. Clause 2 of the said O.M. itself provides that it shall only include the names of those officers who after enquiry or during the course of an enquiry have been found to be lacking in integrity. It will include the names of the officers in categories set out therein and with certain exceptions. This category will include names of officers convicted in a court of law on a charge of lack of integrity or for an offence involving moral turpitude but on whom, in view of exceptional circumstances, a penalty other than dismissal, removal or compulsory retirement is imposed. Also those awarded departmentally a major penalty on charges of lack of integrity; on charge of gross dereliction of duty in protecting the interest of Government although the corrupt motive may not be capable of proof. Those against whom proceedings for a major penalty or court trial are in progress for alluded acts involving lack of integrity or moral turpitude and those who were prosecuted but acquitted on technical grounds, and in whose case on the basis of evidence, during the trial there remained a reasonable suspicion against their integrity. These are categories whose names should not be included. In our opinion, the Agreed list is distinct from the list of public servant of gazetted status of doubtful integrity. The O.M. of 1969 does not repeal or

rescind the O.M. of 1966. On the contrary it notes that the practice of making the Agreed list will not be affected by the O.M. of 1969. There is no denial that the Petitioner's name was in the Agreed list for more than one year. The Petitioner seeks appointment as Member (Technical) of CESTAT which is a Tribunal and as noted by the Central Administrative Tribunal, clothed with Appellate powers in the matter of tax policy and Administration of Direct Taxes.

7. The agreed list is prepared by a procedure which involves discussion with the head of the department concerned, the Additional I.G.P. and the D.I.G. (Special) of the C.B.I. In other words, it is not merely an enquiry by the head of the Department in which event perhaps, there can be some reservations in considering the effect of a name being included in the Agreed lists. The agreed list is prepared based on the inputs from the Additional I.G.P. and D.I.G.(Special) of C.B.I. In other words, of functionaries who gather vital and secret information. All of them together assess and take a decision whether the name of the person should be kept on the agreed list. The post to which the Petitioner seeks appointment is a sensitive post. We agree with the views of the tribunal that it is only persons with unblemished record and high integrity who alone should be allowed to occupy such posts. Any adverse reference against the Officer,

specifically about integrity, even if it be a doubt must necessarily result in such officer being denied appointment to a quasi judicial post. The Tribunals are part of judicial process and administration of justice over which High Court exercise the supervisory jurisdiction. We have no hesitation in holding that such Tribunals must be manned by persons of proven integrity and any doubt about a persons integrity, should be considered as a disqualification. The rule of law envisages a fair and impartial Tribunal not tainted or clothed with such disqualifications, specially about integrity. The Appointment is not by way of promotion but appointment to an ex cadre post. The test applicable to a selection by way of direct recruitment and by promotion will be different. In promotion normally, it is the service record alone that is considered. All that the Petitioner had was a right for being considered by the Selection committee. The integrity of the candidate can always be independently looked into by other material including reports of investigating agencies apart from the profile of the candidate which is available in the C.R. For selection by direct recruitment, the C.R. alone can not be the basis though the Committee may consider the C.R. as material for considering the merit of the candidate. What the selection committee does is to recommend the names, based on the material and the oral interview. The selection committee normally is not clothed with

the power of calling for vigilance report as that is in the domain of the Appointing Authority. As noted earlier, normally when the selection is done by the committee presided over by the Judge of the Supreme Court, the Government ought to accept the recommendation except for valid reasons. The Appointment Committee, considering that the Petitioners name had figured on the agreed list annulled the name of the Petitioner. This in our opinion, would be an exceptional circumstance which the Appointment Committee could have considered as noted by the Supreme Court in the case of Dr. A.K. Doshi. It is true that when the selection committee met, the material was available but not placed before the selection committee. Even if the selection committee prepares a list, there is always a requirement of vigilance clearance for such high posts, before the appointing authority appoints a person to a sensitive post and in this case to an Appellate Tribunal discharging quasi judicial functions. The question of making available to the Petitioner or disclosing to him that his name was on the agreed list, would not arise as by its very nature, the agreed list is secret and the post is sensitive.

. We are therefore, clearly of the opinion that the order of the tribunal does not suffer from any error of law apparent on the face of the record and consequently

the Petition is liable to be dismissed and hence, the same is dismissed. Rule discharged. In the circumstances of the case, there shall be no order as to costs.

(ANOO P V. MOHTA, J.)

(F.I.REBELLO, J.)